

NOTICES OF AMENDMENTS

Monday 23 June 2014

CONSIDERATION OF BILL

Mr Chancellor of the Exchequer

15

- * Schedule 9, page 328, line 20, after “charity,” insert—
 “() an accredited social impact contractor (see section 257JD),”

Mr Chancellor of the Exchequer

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- * Schedule 9, page 330, line 33, after “Part” insert “(except section 257JD)”

Mr Chancellor of the Exchequer

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- * Schedule 9, page 330, line 34, at end insert—

“257JD Accreditation as a social impact contractor

- (1) In this Part “accredited social impact contractor” means a company limited by shares that is accredited under this section as a social impact contractor.
- (2) Applications for accreditation as a social impact contractor must be made to a Minister of the Crown in the form and manner specified by a Minister of the Crown.
- (3) A Minister of the Crown is to accredit a company if, but only if, that Minister is satisfied that—
- (a) the company has entered into a social impact contract (see section 257JE),
- (b) the company is, and at all times since its incorporation has been, established—
- (i) for the purpose of entering into and carrying out a social impact contract, or for that purpose and purposes incidental to it, but
- (ii) for no other purpose, and
- (c) the activities of the company in carrying out that contract will not consist wholly, or as to a substantial part, in excluded activities (see section 257MQ).
- (4) If a Minister of the Crown is satisfied that the condition in subsection (3)(b) or (c) has ceased to be met in relation to a company that is an accredited social impact contractor, that Minister is to withdraw the company’s accreditation with effect from the time the condition ceased to be met or a later time.

Finance Bill, continued**257JE Meaning of “social impact contract”**

- (1) In this Part “social impact contract” means a contract that meets such criteria as may be specified in regulations made by the Treasury.
- (2) The criteria which may be specified under subsection (1) include, in particular, criteria as to a party to the contract other than the company seeking accreditation.
- (3) Criteria may be specified in regulations under subsection (1) by reference to material published by, or on behalf of, a Minister of the Crown after the making of the regulations (as well as by reference to material published before the making of the regulations).
- (4) Regulations under subsection (1) may make different provision for different cases or circumstances or in relation to different areas.

257JF Accreditations: supplementary provisions

- (1) An accreditation must be made so as to be conditional on compliance with—
 - (a) any requirements imposed by or under regulations, and
 - (b) any other requirements considered appropriate by the Minister of the Crown who is accrediting the company concerned.
- (2) The requirements that may be imposed by virtue of subsection (1) include requirements relating to the provision of information.
- (3) Regulations may—
 - (a) make further provision about applications for accreditation,
 - (b) make provision for the variation of an accreditation (including its provisions as to its duration),
 - (c) make provision which, in a case where a company is or has been an accredited social impact contractor, imposes or authorises the imposition of requirements on the company, or on any other party to the social impact contract concerned, to provide information,
 - (d) make provision about the consequences of a failure to comply with any requirement of an accreditation imposed by virtue of subsection (1) or with any requirement imposed by virtue of paragraph (c), including in particular—
 - (i) provision for the withdrawal of the accreditation concerned with effect from the time of the failure or a later time, and
 - (ii) provision for the imposition of penalties,
 - (e) make provision for publication of information about an accreditation or accredited social impact contractor, and
 - (f) make provision for reviews of, or for appeals to the tribunal against, any of the following—
 - (i) a refusal to grant or vary an accreditation,
 - (ii) the imposition of a requirement under subsection (1)(b),
 - (iii) the withdrawal of an accreditation (whether under section 257JD(4) or by virtue of provision made under paragraph (d)(i)), and
 - (iv) the imposition or amount of a penalty imposed by virtue of provision made under paragraph (d)(ii).

Finance Bill, continued

- (4) Regulations under subsection (1) or (3) may—
- (a) make provision for the making of decisions by a Minister of the Crown as to any matter required to be decided for the purposes of the regulations,
- (b) be framed by reference to material published by, or on behalf of, a Minister of the Crown after the making of the regulations (as well as by reference to material published before the making of the regulations),
- (c) make different provision for different cases or circumstances or in relation to different areas, and
- (d) contain incidental, supplemental, consequential and transitional provision and savings.
- (5) In this section—
 “accreditation” means accreditation under section 257JD, and
 “regulations” means regulations made by the Treasury.

257JG Period of accreditation as a social impact contractor

- (1) An accreditation under section 257JD has effect for a period—
- (a) beginning with the day specified in the accreditation, and
- (b) of a length specified in, or determined in accordance with, the accreditation.
- (2) The day specified under subsection (1)(a) in an accreditation may not be earlier than 6 April 2014 but subject to that—
- (a) may be, or be earlier than, the day it is decided to grant the accreditation (and in particular may be, or be earlier than, the day the application for the accreditation is made), and
- (b) may be earlier than the day section 257JD comes into force.
- (3) This section has effect subject to sections 257JD(4) and 257JF(3)(d)(i) (withdrawal of accreditations).

257JH Functions of Ministers of the Crown under sections 257JD to 257JG

- (1) A Minister of the Crown may delegate any function given to a Minister of the Crown by or under sections 257JD to 257JG other than a power of the Treasury to make regulations.
- (2) In those sections and this section “Minister of Crown” has the meaning given by section 8(1) of the Ministers of the Crown Act 1975.”

Mr Chancellor of the Exchequer

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* Schedule 9, page 331, line 1, at end insert—

“() Subsection (1)(b) is subject to the provisions in sections 257LB and 257MJ to 257MN which provide for conditions set out in those sections not to apply where the social enterprise is an accredited social impact contractor.”

Finance Bill, *continued*

- Mr Chancellor of the Exchequer 19
- * Schedule 9, page 334, line 44, at end insert—
- “() Subsections (2) to (4) do not apply if the social enterprise is an accredited social impact contractor.”
- Mr Chancellor of the Exchequer 20
- * Schedule 9, page 335, line 12, after “257MJ(2)(c)” insert “or is a parent company that is an accredited social impact contractor”
- Mr Chancellor of the Exchequer 21
- * Schedule 9, page 339, line 23, at end insert—
- “257M The continuing to be a social enterprise requirement**
- The social enterprise must be a social enterprise throughout the shorter applicable period.”
- Mr Chancellor of the Exchequer 22
- * Schedule 9, page 343, line 11, after “period” insert “, but this does not apply if the social enterprise is an accredited social impact contractor”
- Mr Chancellor of the Exchequer 23
- * Schedule 9, page 343, line 15, after “business” insert “—
- (i) ”
- Mr Chancellor of the Exchequer 24
- * Schedule 9, page 343, line 17, leave out “non-qualifying” and insert “non-trade activities, and
- (ii) does not consist wholly, or as to a substantial part, in the carrying-on of excluded”
- Mr Chancellor of the Exchequer 25
- * Schedule 9, page 344, line 14, at end insert “, and
- “non-trade activities” means activities which are neither of the following—
- (c) activities carried on in the course of a trade, and
- (d) activities carried on in the course of preparing to carry on a trade.”
- Mr Chancellor of the Exchequer 26
- * Schedule 9, page 345, line 26, at end insert—

Finance Bill, continued

“() This section does not apply if the social enterprise is an accredited social impact contractor.”

Mr Chancellor of the Exchequer

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* Schedule 9, page 346, line 19, at end insert—

“() If the social enterprise is an accredited social impact contractor, the preceding provisions of this section apply with the following modifications—

- (a) in subsection (1), for “28 months” substitute “24 months”,
- (b) in that subsection, for “the funded purpose” substitute “the carrying out of the social impact contract concerned”, and
- (c) omit subsections (2), (3), (5) and (6).”

Mr Chancellor of the Exchequer

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* Schedule 9, page 347, line 7, at end insert—

“() This section does not apply if the social enterprise is an accredited social impact contractor.”

Mr Chancellor of the Exchequer

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* Schedule 9, page 347, line 20, at end insert “257JD,”

Mr Chancellor of the Exchequer

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* Schedule 9, page 353, line 10, at end insert—

“() If the social enterprise is an accredited social impact contractor, subsection (1) applies with the omission of its paragraph (a).”

Mr Chancellor of the Exchequer

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* Schedule 9, page 354, line 8, at end insert—

“() If the social enterprise is an accredited social impact contractor, subsection (3) applies with the omission of its paragraph (a).”

Mr Chancellor of the Exchequer

32

* Schedule 9, page 355, line 8, at end insert—

“() An order under this section may make different provision for different cases or purposes.”

Mr Chancellor of the Exchequer

33

* Schedule 9, page 372, line 31, leave out “257MA” and insert “257M”

Finance Bill, *continued*

- Mr Chancellor of the Exchequer 34
- * Schedule 9, page 373, line 24, after “sections” insert “257M,”
- Mr Chancellor of the Exchequer 35
- * Schedule 9, page 374, line 13, at end insert—
- “(7) If the event mentioned in subsection (1) is one whose occurrence results in the requirement in section 257M not being met in respect of the investment, the references in subsections (2) and (3) to the social enterprise are to—
- (a) the body concerned even though it has ceased to be a social enterprise, or
- (b) the body into which the social enterprise has been converted.”
- Mr Chancellor of the Exchequer 36
- * Schedule 9, page 376, line 11, after “prevent” insert “—
- (a) ”
- Mr Chancellor of the Exchequer 37
- * Schedule 9, page 376, line 12, at end insert—
- “(b) disclosure to a Minister of the Crown for the purposes of functions of a Minister of the Crown under sections 257JD to 257JG, or
- (c) disclosure to a person for the purposes of functions delegated to the person under section 257JH(1).”
- Mr Chancellor of the Exchequer 38
- * Schedule 9, page 376, line 18, after “Information” insert “originally disclosed in reliance on subsection (2)(a)”
- Mr Chancellor of the Exchequer 39
- * Schedule 9, page 376, line 19, at end insert—
- “(5) Information originally disclosed in reliance on subsection (2)(b) or (c) may be disclosed in reliance on subsection (3)(a) only for the purposes of—
- (a) functions of a Minister of the Crown under sections 257JD to 257JG, or
- (b) functions delegated to a person under section 257JH(1).
- (6) If, in contravention of subsections (3) to (5), any revenue and customs information relating to a person is disclosed and the identity of the person—
- (a) is specified in the disclosure, or
- (b) can be deduced from it,
- section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.

Finance Bill, *continued*

- (7) In subsection (6) “revenue and customs information relating to a person” has the meaning given by section 19(2) of that Act.
- (8) Subject to subsections (3) and (5), no obligation as to confidentiality or other restriction on disclosure, whether imposed by an enactment or otherwise, prevents disclosure of relevant information—
- (a) to a Minister of the Crown for the purposes of functions of a Minister of the Crown under sections 257JD to 257JG,
 - (b) to a person for the purposes of functions delegated to the person under section 257JH(1), or
 - (c) to an officer of Revenue and Customs for the purpose of assisting Her Majesty’s Revenue and Customs to discharge their functions under the Income Tax Acts so far as relating to matters arising under this Part.
- (9) In subsection (8) “relevant information” means information obtained—
- (a) by a Minister of the Crown, or
 - (b) by a person to whom functions have been delegated under section 257JH(1),
- in the course of discharging functions under sections 257JD to 257JG.
- (10) In this section “Minister of the Crown” has the meaning given by section 8(1) of the Ministers of the Crown Act 1975.”

Mr Chancellor of the Exchequer

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- * Schedule **9**, page **381**, line **20**, leave out “by way of, or amounts” and insert “not by way of, and does not amount”

Mr Chancellor of the Exchequer

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- * Schedule **10**, page **387**, line **5**, at end insert—

“(8) A reference in this paragraph to a social enterprise is a reference to a body that is a social enterprise for the purposes of Part 5B of ITA 2007 (see section 257J of that Act).”

EXPLANATORY NOTE

CLAUSE 53 RELIEF FOR INVESTMENTS IN SOCIAL ENTERPRISES AND SCHEDULES 9 TAX RELIEF FOR SOCIAL INVESTMENTS AND SCHEDULE 10 INVESTMENTS IN SOCIAL ENTERPRISES: CAPITAL GAINS AMENDMENTS 15 - 41 TO SCHEDULES 9 AND 10

SUMMARY

1. These amendments extend the provisions for the new tax reliefs for social investment (SITR) introduced in the Finance Bill. They give effect to the Government's proposal to introduce relief for social impact bond investment, announced at Autumn Statement 2013, with a further Roadmap published on 30 January 2014. A copy of the announcement is at this link <https://www.gov.uk/government/publications/social-investment-roadmap>. The amendments also include some further detailed technical amendments to the original provisions for SITR in Schedules 9 and 10.

2. Social impact bonds are contracts awarded by public sector bodies for the delivery of social outcomes. Payment is made according to outcomes agreed with the contractor and is dependent on the desired social outcomes being achieved. Contractor companies entering into social impact bond contracts will be subject to an accreditation process, intended to be administered by Cabinet Office, to enable their investors to obtain SITR.

DETAILS OF THE AMENDMENTS TO SCHEDULE 9

3. Amendment 15 sets out a new subsection (2)(d) of section 257J of the Income Tax Act 2007 (ITA) which includes 'accredited social impact contractors' in the category of social enterprises for which SITR is available. These are the companies which enter into social impact contracts, as defined in the following amendments. The investors in accredited social impact contractors will be eligible for SITR in broadly the same way as investors in other forms of social enterprise.

4. Section 257JC provides that in Part 5B ITA, a reference to a company includes a reference to a charity that is a trust. Amendment 16 disapplies that provision in relation to the accreditation of social impact contractors.

5. Amendment 17 introduces new sections 257JD to 257JH to part 5B of ITA. These provisions include the definition of 'accredited social impact contractor' and provide for the accreditation by a Minister of the Crown. It is intended that the accreditation process will be administered by the Minister for the Cabinet Office.

6. New section 257JD contains the definition of 'accredited social impact contractor'. Subsection (1) of new 257JD says that this term means a company which is limited by shares

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SCHEDULES 9 AND 10

and which is accredited under this section as a social impact contractor. Subsection (2) of new section 257JD says that applications for accreditation must be made to a Minister of the Crown in the form and manner specified. Subsection (3) of new section 257JD says that the Minister can only accredit a company if satisfied that each of three conditions is satisfied.

7. The three conditions for accreditation are as follows. The first condition is that the Minister must be satisfied that the company has entered into a relevant contract (a 'social impact contract'). The second condition is that the company must be, and must at all times since incorporation have remained, established for the purpose of entering into and carrying out the terms of such a contract, or for that purpose and incidental purposes; it cannot at any time have another purpose (subsection (3)(b) of new section 257JD). The third condition is that the activities of the company in carrying out the social impact contract will not consist wholly or as to a substantial part in excluded activities (subsection (3)(c) of new section 257JD). Excluded activities are defined later in the part, in section 257MQ.

8. Subsection (4) of new section 257JD requires the Minister to withdraw accreditation from a company if he is satisfied that the second and third conditions described above, cease to be met. The Minister has discretion to withdraw the accreditation either from the time the condition ceased to be met, or at a later time.

9. New section 257JE provides the Treasury with the authority to make regulations setting out the criteria which a social impact contract must demonstrate in order for the social impact contractor to be accredited for the purpose of the tax relief scheme. The section describes the extent of the Treasury power, and allows the regulations to include criteria relating to a party to the contract other than the company which is seeking accreditation. It also allows the regulations to be supplemented by guidance material published by the Government department on behalf of the Minister responsible for administering the accreditation facility.

10. New section 257JF provides more detail about the requirements of accreditation. Accreditation must be made on terms required by regulations and any other terms considered appropriate by the Minister of the Crown who is accrediting the company concerned. An accreditation must be conditional on compliance with those requirements.

11. Subsection (2) of new section 257JF says that the requirements that may be imposed include requirements relating to the provision of information.

12. Subsection (3) of new section 257JF provides authority for the regulations to make provision for further specific matters, including: the possibility of an accreditation being varied; the consequences of a breach of any of the conditions of accreditation; the scope for the accrediting department to publish information about an accreditation or accredited contractor; the right for review of, or appeal against, various decisions or actions of the accrediting body.

13. New section 257JG sets out the period for which accreditation as a social impact contractor has effect.

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14. Subsection (1) says that this period begins with the day specified in the accreditation and that its length is determined in accordance with the date specified in or determined in accordance with the accreditation.
15. Subsection (2) allows for retrospective accreditation, from a date earlier than either the day the application for accreditation is made or the day new section 257 JD comes into force. However, accreditation cannot be effective for a date before 6 April 2014.
16. Subsection (3) ensures that the section is subject to the power for withdrawal of accreditation so that on such a withdrawal, the period of accreditation will come to an end in accordance with the date the withdrawal takes effect.
17. New section 257JH provides for delegation by a Minister of the Crown of any function given by new sections 257JD to 257JG. It also provides that the term Minister of the Crown has the meaning given by section 8(1) of the Ministers of Crown Act 1975.
18. Amendment 18 inserts a new subsection 257K(c) which provides for the conditions for eligibility for SITR set out in Chapters 3 and 4 of the new Part 5B to differ where the social enterprise concerned is an accredited social impact contractor. These variations are set out in amendments made to the conditions concerned (see below).
19. Amendment 19 introduces new subsection 257LB(4)(c) which disapplies the requirements in subsections (2) to (4) of section 257LB in relation to accredited social impact contractors. Section 257LB otherwise provides that the issuing arrangements for an investment must not include arrangements for or with a view to the cessation of any trade to be carried on by the social enterprise, nor any arrangements for the disposal of assets belonging to that company or a person connected with it. Those restrictions would be inappropriate in the case of a social impact contract, as the contract is likely to include an end date which may well mark the cessation of the social impact contractor's period of trading.
20. Section 257LC prevents an investment in a social enterprise from qualifying for tax relief, if there are arrangements in place to insure or indemnify the investor against the risks of making the investment. Subsection (2) qualifies that by specifying that the restriction does not apply to the normal commercial arrangements which an enterprise or its subsidiaries could be expected to make to insure against risks arising in the course of carrying on business. Amendment 20 extends subsection 257LC(2) to social impact contractors.
21. Amendment 21 introduces new section 257M which is a specific requirement that the social enterprise must be a social enterprise throughout the shorter applicable period (as defined in new section 257KC). This amendment has effect for all social enterprises as defined in section 257J(2), including social impact contractors.
22. Amendment 22 amends section 257MJ(1) so that the eligibility requirement for SITR in section 257MJ that the social enterprise meets the trading requirement throughout the shorter applicable period does not apply to an accredited social impact contractor. That condition is unnecessary because in order to be accredited, a social impact contractor will already have entered into a trading contract and therefore can be considered to have met the trading requirement. The withdrawal of an accreditation as allowed for by section 257JD(4),

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or under any regulations enacted by virtue of sections 257JE and 257JF, will have the same outcome for a social impact contractor as would the failure to meet the requirements of section 257MJ for one of the other forms of eligible social enterprise listed at section 257J(2).

23. Amendments 23 to 25 make a detailed change to the “trading requirement” at section 257MJ(2)(b). This provides that a social enterprise which is neither a parent company nor a charity must not carry on non-trading activities (defined as activities carried on either in the course of a trade, or in the course of preparing to carry on a trade); nor “excluded activities” (as listed in section 257MQ) if those excluded activities form a substantial part of the trade. The restriction applies for the duration of the shorter applicable period.

24. Section 257ML specifies that the relevant investment must be made to raise money for the carrying on of a qualifying trade carried on by the social enterprise or a 90% social subsidiary, or for activities preparatory to such a trade which the relevant enterprise begins within 2 years of the date of investment. Amendment 26 introduces new section 257ML(5) which disapplies section 257ML in relation to an accredited social impact contractor. It is unnecessary given that a social impact contractor will already have entered into a trading contract by the time it seeks accreditation, and that it must exist only for that purpose.

25. Section 257MM imposes a requirement that a social enterprise must use the monies raised from the relevant investment for the purpose of a qualifying activity (either trading or activities preparatory to trading) within 28 months of the investment being made. Amendment 27 modifies that requirement for an accredited social impact contractor, so that the monies raised must be used within a 24 month period for the carrying out of the relevant social impact contract.

26. Amendment 28 introduces a new subsection 257MN(6) which disapplies the condition in new section 257MN in relation to accredited social impact contractors. Section 257MN otherwise requires that the relevant trade or preparatory activities must be carried on by the social enterprise or by a 90% social subsidiary. In the case of an accredited social impact contractor, it is by definition only that company which will fulfil the social impact contract.

27. Amendment 29 applies the definition of excluded activity in section 257MQ to accredited social impact contractors as well as to the other types of social enterprises listed at section 257J(2).

28. Section 257P deals with the time limit within which an investor may make a claim to tax relief. A claim may not be made before the social enterprise invested in has traded for at least 4 months. Amendment 30 disapplies that condition where the investment is in a social impact contractor.

29. Section 257PB deals with the requirement that a social enterprise must provide HMRC with a statement confirming that it complies with the conditions listed in subsection (1). Subsection (3) specifies that the enterprise must have traded for at least 4 months before it can provide this statement. It must provide it within 2 years of the end of the tax year in which the investment is made, or within 2 years of the enterprise having traded for 4 months,

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if that 4 month date occurs after the end of the tax year in which the investment is made. Amendment 31 disapplies the references to the 4 month period of trading for accredited social impact contractors.

30. Amendment 32 slightly extends the power already afforded by section 257PE to amend Chapter 4 of the new Part 5B, by specifying that a Treasury order make different provision for different cases or purposes.

31. Amendment 33 inserts a reference to new section 257M into section 257SD, which lists those sections by virtue of which tax relief may be withdrawn or reduced.

32. Amendment 34 inserts a reference to new section 257M into the list of sections of Part 5B at subsection (1) of section 257SF. Section 257SF imposes an obligation on a social enterprise to inform HMRC of an event which causes the requirements of any one of the listed sections to cease to be met.

33. Amendment 35 amends the information obligation in section 257SF. It ensures that where the obligation arises as a result of an event which results in the social enterprise ceasing to be a social enterprise, the obligation to inform HMRC about the relevant event, continues to apply.

34. Amendments 36 to 39 make changes to the disclosure provisions in Chapter 8 of Part 5B. These are mainly consequential on the introduction of the accreditation process for social impact contractors, to ensure consistency with the existing provisions for disclosure to the various regulators for other forms of eligible social enterprise.

35. Amendments 36 to 38 introduce new subsection (2)(b) and (c) of section 257SI, and amend subsection (4), which together provide that section 18 of the Commissioners for Revenue and Customs Act 2005 (CRCA) does not prevent disclosure by HMRC to a Minister of the Crown or a delegate for the purposes of their functions under new sections 257JD to 257JG.

36. Amendment 39 introduces new subsections 257SI(5) to (10).

37. Subsection (5) makes clear that information disclosed to the Minister of the Crown or a delegate by HMRC may only be further disclosed for the purpose of functions under relevant provisions of Part 5B.

38. Subsection (6) applies the provisions of section 19 of CRCA to any wrongful disclosure of revenue and customs information relating to a person.

39. Subsection (8) provides that HMRC's confidentiality obligations do not prevent the disclosure of relevant information to a Minister of the Crown or his authorised delegate for the purpose of exercising functions under sections 257JD to 257JG. Similarly, relevant information may be provided to HMRC for the purpose of exercising its functions under Part 5B. 'Relevant information' is defined as information obtained by a Minister of the Crown or delegate in the course of discharging functions under new sections 257JD to 257JG.

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40. Amendment 40 amends a typographical error in the legislation: the word “not” was omitted from the original.

41. Amendment 41 inserts new subparagraph 1(8) to Schedule 8B of the Taxation of Chargeable Gains Act 1992. That insertion makes explicit that a reference in paragraph 1 to a social enterprise is a reference to such an enterprise as is defined for the purpose of Part 5B ITA.

BACKGROUND NOTE

42. These amendments provide for the tax reliefs for investments in social enterprises set out in the original Schedule 9 to the Finance Bill to be extended to investors in special purpose companies which enter into social impact contracts.